IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.43979 of 2002

1.R.Krishnamoorthy
2.Smt.Uma Maheswari ... Petitioners

Vs.

1.The Commissioner,
Thiruthuraipoondi Municipality,
Thiruthuraipoondi, Thiruvarur Dist.

2.The Asst.Director of Municipality,
Panagal Buildings, Thanjavur.

3.The Asst.Divisional Engineer,
Sub Divisional Office,
Highways Department,
Thiruthuraipoondi, Thiruvarur Dist.

4.The Divisional Engineer,
Highways Department,
Thiruvarur.

5.The District Collector,
Thiruvarur.

6.The Superintendent of Police,
Thiruvarur.

7.M.Kaliyamoorthy.

8.V.Chidambaram.

9.V.Ganesan.

10.R.V.Chidambaram.

11.Smt.Amsavalli.

12.N.Srinivasan.

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13.R.Kannaiyan.

14.Murugaiya Thevar.

15.S.Venkatachalam.

16.The Secretary to Government,
Highways Department, Fort St.George,
Chennai -600 009.

17.The Superintending Engineer,
Highways Department,
Subramaniapuram, Tiruchirappali. .... Respondents

RR16 & 17 impleaded as per order dated 15.12.2006 by MJJ in WP.Nos.18891/06 in WP.No.43979/02.

The Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus as stated therein.

For petitioners : Mr.Muthukumarasamy
Sr.Advocate - for
M/s.P.Kumar

For respondents : Mr.V.Subbarayan for R1
Mr.C.Thirumaran -G.A.for R3 to R6
M/s.R.Suresh Kumar
&
Mr.V.Balaji - for R7 to R9
and R11 to R15

O R D E R

The Writ Petition has been filed praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent, the proceedings of the Municipal Council, Thiruthuraipoondi, dated 20.05.2002, including the resolution number 139 and to quash the same and direct the respondents 1 to 5 to remove the encroachment made by the respondents 7 to 15 in Survey No.158,Mannargudi Road, Thiruthuraipoondi, within a time frame as fixed.

2.Heard the learned counsel for the petitioners as well as for the respondents.

3.The brief facts of the case, as stated by the petitioner, are as follows:-

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The land in Survey No.161, Thiruthuraipoondi Town belongs to Arulmigu Bhava Oushadeeshwarar Swami Devasthanam, Thiruthuraipoondi. The petitioners' vendor V.K.S.M.Noorudeen and his predecessors were the tenants in respect of ten cents in Survey No.161. The said Noorudeen was paying pagudhi in respect of the site of the above temple. There was a superstructure put up by Noorudeen's predecessors. Hence, the said Noorudeen and his predecessors are the absolute owners of the superstructure. While so, the Devasthanam had filed a suit against Noorudeen for recovery of possession in respect of the above site before the District Munsif Court, Thiruthuraipoondi. A second appeal had been filed before this Court in S.A.No.244 of 1974. This Court had held that the tenancy is of a permanent nature and that the Devasthanam can only collect pagudhi from him. While so, Noorudeen has leased out his building to one Babu Iyer for non-residential purpose. The said Babu Iyer, had in turn, sublet the said portion to one Radhakrishna Iyer. Since the said superstructure was in a dilapidated stage, Noorudeen had filed an eviction proceedings before the Rent Controller, Thiruthuraipoondi, both against Babu Iyer and Radhakrishna Iyer, in R.C.O.P.No.2 of 1978, on the ground of demolition and reconstruction. After Babu Iyer had died his legal representatives were added as parties to the said proceedings. Later, the matter was taken up to the Supreme Court in Civil Appeal No.1791 of 1987. At that stage, a compromise was entered into between Noorudeen and the legal representatives of Babu Iyer and Radhakrishna Iyer. The Supreme Court by its order, dated 18.08.1987, had passed a consent order to the effect that the tenants shall give the vacant possession of the suit premises to the landlord and thereafter, the landlord after demolishing the existing structure, will put up a new structure and the tenant shall be permitted to put up a temporary structure in an area not exceeding 800 sq. ft., in order to carry on his business. However, since the tenants did not vacate the premises, the landlord, namely, Noorudeen, could not demolish the superstructure in order to reconstruct the same as per their compromise decree. In the mean time, Noorudeen had died and his legal representatives had filed Execution Proceedings in E.P.No.2 of 1993, before the Rent Controller, Thiruthuraipoondi, for delivery of possession. The delivery was ordered on 07.10.1993. However, the legal representatives of Babu Iyer, who had filed a suit, before the District Munsif Court, Thiruthuraipoondi, in O.S.No.632 of 1993, for a declaration that the compromise decree passed in Civil Appeal No.1791 of 1987 was null and void. The District Munsif by an order, dated 31.12.1998, had dismissed the suit. The first appeal was filed in A.S.No.91 of 1999, on the file of the Principal Sub-Court, Nagapattinam, which was dismissed on 24.09.1999. Thus, the judgment and decree passed in O.S.No.632 of 1993 had become final, since no second appeal had been filed thereafter. While so, the first petitioner and his daughter, the second petitioner herein, had purchased the permanent tenancy rights in respect of the above mentioned property, along with the superstructure, by a sale deed, dated 17.05.2000, from the legal representatives of Noorudeen. Thus, the petitioners became the absolute

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owners of the superstructure in respect of old door. No.4, Survey No.161, Thiruthuraipoondi, situated on the southern side of Mannargudi road and the western side of Thiruvarur road. The petitioners had filed an impleading petition before the Rent Controller, Thiruthuraipoondi, in E.A.No.96 of 2000 in E.P.No.2 of 1993. The impleading petition was ordered on 30.01.2002. In the said E.P.No.2 of 1993, the delivery was effected, on 17.04.2002, and the petitioners took delivery of the property through Court. Thereafter, the petitioners have put up constructions in accordance with the orders of the Supreme Court, dated 18.08.1987, made in Civil Appeal No.1791 of 1987. Encroachments have been made in the form of thatched huts on the northern side of the petitioners property, in Survey No.158, belonging to the Highways Department and respondents 7 to 15 are in occupation of the huts doing flower business and having petty shops. Unless the encroachments are removed, the petitioners cannot enter the property in question from the northern side and to put up the construction to the extent of 800 Sq.feet, in compliance with the compromise decree passed by the Supreme Court. Therefore, the petitioners had sent representations to the first respondent, on 22.04.2002, requesting him to remove the encroachments. Since there was no response, the first petitioner had sent a detailed representation, dated 25.05.2002, to the first and third respondents, with the copy marked to the second, fourth and fifth respondents and to the other concerned officials, requesting them to take necessary action to remove the encroachments. The fourth respondent had sent a letter to the third respondent in Ku.Na.Ka.No.3879/2002/A5, dated 30.05.2002, to take action to remove the encroachments through the municipality, Thiruthuraipoondi. The first respondent had sent a reply in Na.Ka.No.2916/2002/F1, dated 31.05.2002, referring to the earlier representation of the petitioner, dated 22.04.2002, and without referring to his subsequent representation, dated 25.05.2002, stating that since the encroachment in Survey No.158 related to the Highways, the petitioners may approach the Highways Department, seeking for necessary relief.

4.In the month of April, 2000, encroachments on several arterial roads in Thiruthuraipoondi, including those on the northern side of Survey No.161, viz., in Survey No.158, Mannai Road, where the respondents 7 to 15 were running their business, were removed after giving proper notice. After the encroachments had been removed, the Town Planning Officer of the municipality had sent a report, dated 12.04.2000, to the first respondent stating that the encroachments have been removed. Based on the said report, the municipal council had passed a resolution, dated 02.05.2000, in resolution No.109. Accordingly, the assignment made in favour of the encroachers were cancelled. Subsequently, respondents 7 to 15 had again encroached on the cleared areas and had approached the Municipal Council to assess the ground rent again in their favour. After the first petitioner had sent a representation, dated 22.04.2002, to the first respondent to remove the encroachments, the Municipal Council, Thiruthuraipoondi, had passed another resolution, on 20.05.2002, deciding to collect the ground rent from the respondents 7 to 15, by resolution

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No.139. Such a resolution is beyond the jurisdiction of the Municipal Council and it is totally illegal as being contrary to law.

5.In the counter affidavit filed by the first respondent, it has been stated that the northern side of the petitioners' property in S.No.158, belongs to the Highways and the same is vested with the first respondent municipality. The first respondent municipality is maintaining the roads in question, since it is an approach road for the old bus stand, wherein 10 shops were located as per the lease granted by the municipality from the year 1967. The respondents 7 to 15 are in occupation of the respective shops, which were leased out by the first respondent municipality and the said shops were in existence from the year 1967, in terms of the lease granted by the first respondent. The first respondent municipality had already granted permission for the shops by a resolution No.64, dated 31.05.1967. Thereafter, the occupiers of the shops have been doing their business without interuption for more than three decades, paying their ground rent to the municipality. Further, the petitioners were also having their shops on lease till the year 2000. After getting the tenancy right, the petitioner sent a representation, on 25.05.2002, for which the first respondent had sent a reply asking the petitioners to approach the third and fourth respondents to seek their remedy. The Assistant Development Engineer, by his letter, dated 12.08.2002, had stated that the land bearing S.No.158 was belonging to the Highways Department. So, the third and fourth respondents had requested the first respondent to remove the shops and hand over the land to the Highways Department. After receiving the said letter, it was placed before the Municipal Council for the passing of an appropriate resolution. The Municipal Council by its resolution No.328, dated 29.11.2002, came to the conclusion of demanding the Highways Department to hand over the said road to the first respondent municipality. The said resolution had been sent to the Highways Department for their approval and consent.

6.In the counter affidavit filed on behalf of the third respondent, it has been stated that, till date, the possession of Survey No.158 of Thiruthuraipoondi Town, is with the first respondent municipality and the Highways Department is ready to take over the road in question, after cancelling the resolution passed by the Thiruthuraipoondi municipality, vide resolution No.328, dated 29.11.2002. Further, the Thiruthuraipoondi municipality, has been maintaining the road, even though it belongs to Highways Department. The said Municipality has been collecting rent from the encroachers and has allowed to put up shops in the encroached area. The Commissioner, Thiruthuraipoondi municipality, the first respondent herein, has expressed, in his letter No.2916/2002/F, dated 23.07.2002, that the road was no longer required for them and had requested the Highways Department to take over the road. Accordingly, the office of the third respondent had addressed the Thiruthuraipoondi municipality, vide letter No.40/2002 A.2, dated 12.08.2002, to hand over the road for further maintenance by the third respondent department, after evicting the encroachment and cancelling the permits given to the encroachers by way of

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collecting rents. Subsequently, the Thiruthuraipoondi municipality, has passed the resolution No.328, dated 29.11.2002, stating that the road may be handed over to the said municipality. The said resolution had been communicated to the office of the third respondent, vide letter No.R.C.2916/2002/F1, dated 11.02.2003. The third respondent department is ready to take over the land after cancelling the resolution passed by the municipality, in resolution No.328, dated 29.11.2002, and that action is being taken in that regard.

7.In the counter affidavit filed on behalf of the respondents 7,8,9 and 11 to 15, it has been stated that the said respondents have been doing business in their respective shops put up in Survey No.158 for more than 30 years and they have been paying the ground rent to the Thiruthuraipoondi municipality. There is no substance in the contentions of the petitioners that the land in Survey No.161 can be accessed only, if the shops in Survey No.158 are removed. If at all there was a dispute with regard to the land in question, it is for the Thiruthuraipoondi municipality and the Highways Departments to resolve the same. The petitioners cannot have any claim over the land in question.

8.At this stage of the hearing of the writ petition, the learned counsel appearing on behalf of the petitioners had submitted that the Tamil Nadu State Government, under Section 36 of the Tamil Nadu District Municipalities Act, 1920, has the power to cancel or vary any resolution passed by the municipality, after giving an opportunity of hearing to the persons concerned. Further, it has been pointed out that the Highways Department has taken steps to get back the area in question in S.No.158 from the Thiruthuraipoondi municipality, as seen from the counter affidavit filed on behalf of the third respondent. It has also been submitted that it would suffice, if the 16th respondent, namely, the Secretary to government, Highways Department, Chennai, representing the Government of Tamil Nadu is directed to invoke the powers under Section 36 of the Tamil Nadu District Municipalities Act,1920, to suspend or cancel the resolution passed by the Thiruthuraipoondi Municipal Council resolution No.328, dated 29.11.2002.
Section 36 of the Tamil Nadu District Municipalities Act,1920, reads as follows :-

> "36. Power to suspend or cancel resolutions, etc, under Act-
> (1) The (State Government) may, by order in writing-
> (i) suspend or cancel any resolution passed, order issued, or license or permission granted, or
> (ii) prohibit the doing of any act which is about to be done or is being done in pursuance or under colour of this Act, if, in their opinion.
> (a) such resolution, order, licence, permission or act has not been legally passed, issued, granted or authorized, or

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(b) such resolution, order, licence, permission or act is in excess of the powers conferred by this Act or of any other law, or

(c) the execution of such resolution or order, the continuance in force of such licence or permission or the doing of such act is likely to cause danger to human life, health or safety, or is likely to lead to a riot or an affray:

Provided that the (State Government) shall before taking action under this section on any of the grounds referred to in clauses (a) and (b) give the authority or person concerned an opportunity for explanation.

(Provided further that nothing in this sub-section shall enable the (State) Government to set aside any election which has been held)

(2) If, in the opinion of the district collector, immediate action is necessary on any of the grounds referred to in clause (c) of sub-section (1) he may suspend the resolution, order, licence, permission or act, as the case may be, any report to the (State Government) who may thereupon either rescind the collector's order or after giving the authority or person concerned a reasonable opportunity of explanation, direct that it continues in force with or without modification permanently or for such period as they think fit".

In such circumstances, the 16th respondent is directed to take appropriate action in accordance with Section 36 of the Tamil Nadu District Municipalities Act,1920, with regard to the alleged encroachments in Survey No.158 of Thiruthuraipoondi Town and pass appropriate orders, after giving sufficient opportunity to the petitioners of the Thiruthuraipoondi municipality , within eight weeks from the date of receipt of a copy of this order.

With the above directions, the writ petition is disposed of. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Commissioner,
Thiruthuraipoondi Municipality,
Thiruthuraipoondi, Thiruvarur Dist

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2. The Asst.Director of Municipality,
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3. The Asst.Divisional Engineer,
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5. The District Collector,
  Thiruvarur.
6. The Superintendent of Police,
  Thiruvarur.
7.The Secretary to Government,
  Highways Department, Fort St.George,
  Chennai -600 009.
8. The Superintending Engineer,
   Highways Department,
   Subramaniapuram, Tiruchirappali.

1 cc To Mr.P.Kumar, Advocate, SR.4997.
1 cc To Mr.R.Suresh kumar, Advocate, SR.5140.
1 cc To The Government Pleader, SR.5339.

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